UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

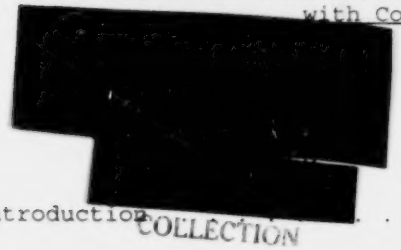
E/CN.4/1997/12
10 February 1997

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS
Fifty-third session
Item 3 of the provisional agenda

ORGANIZATION OF THE WORK OF THE SESSION

Second report on the human rights situation in Burundi submitted by the Special Rapporteur, Mr. Paulo Sérgio Pinheiro, in accordance with Commission resolution 1996/1



CONTENTS

		Paragraphs	Page
Introduction	. . . . .	1 - 3	3
I.	THE OVERALL SITUATION	4 - 36	3
	A. Evolution of the conflict in Burundi in the last three months of 1996	4 - 16	3
	B. The continuing stagnation in Burundi . .	17 - 36	7
II.	OBSERVATIONS ON THE HUMAN RIGHTS SITUATION . .	37 - 72	11
	A. Violations of the right to life and physical integrity	37	11
	B. Enforced disappearances	38 - 50	38
	C. Obstacles to the right to freedom of movement and freedom to choose one's residence . .	51 - 57	13

CONTENTS (continued)

		Paragraphs	Page
	D. Obstacles to freedom of expression and freedom of the press	58 - 61	15
	E. Violations of the right to an adequate standard of living and the right to health	62 - 65	16
	F. Violations of the right to education	66 - 72	17
III.	FINAL OBSERVATIONS AND RECOMMENDATIONS	73 - 117	18
	A. Final observations	73 - 88	18
	B. Recommendations	89 - 117	22

Introduction

1. This document is submitted by the Special Rapporteur to the Commission on Human Rights at its fifty-third session, in accordance with Commission resolution 1996/1; it follows on from the report he submitted to the General Assembly at its fifty-first session (A/51/459) for the period 16 February to 30 September 1996 and covers the last three months of 1996. However, as the Special Rapporteur announced in his report to the General Assembly, the chapter concerning observations on the human rights situation will cover the period from mid-February to the end of December 1996.

2. The first chapter gives some points of reference concerning the general situation and recent developments in Burundi. The second chapter contains the observations which the Special Rapporteur feels it necessary to make on the human rights situation, and the last chapter gives his final observations and recommendations.

3. Subsequent to the extension of his mandate for a further year by Commission resolution 1996/1, the Special Rapporteur undertook his third mission to Burundi from 1 to 17 July 1996 (see A/51/459, paras. 1-9); he then went to United Nations Headquarters to submit his report to the Third Committee of the General Assembly on 15 November 1996 and to give a press conference in which the Special Rapporteur on the situation of human rights in Rwanda, Mr. René Degni-Ségui, also took part. The Special Rapporteur also met the representatives of the Permanent Missions to the United Nations of South Africa, Burundi, Chile and the United States, and Mr. Lansana Kouyaté, Assistant Secretary-General for Political Affairs. In addition, he took part in a video conference on Burundi organized by Human Rights Watch, with some of its members in New York, Washington and Buffalo. Lastly, he participated in several radio programmes broadcast by Radio France International, in a number of British Broadcasting Corporation (BBC) programmes and in programmes on Brazilian television.

I. THE OVERALL SITUATION

A. Evolution of the conflict in Burundi in the last three months of 1996

4. During the last three months of the year just ended, the trends which the Special Rapporteur had already identified in his report to the General Assembly on the human rights situation in Burundi, following his third mission from 1 to 17 July 1996, had been greatly exacerbated by the crisis which had ravaged the eastern region of Zaire. There had been an escalation of the conflict and fighting which was frequently violent, partly as a result of the activity of the Banyamulenge rebels, which resulted in the movements or flight of the population towards Uvira and other parts of Southern and Northern Kivu. It is believed that, during these population movements, large numbers of Hutu rebels, including their general staff, made for the United Republic of Tanzania via the provinces of south and south-west Burundi.

5. The recent crises and outbreaks of rebellion in Zaire have directly affected Burundi and diverted the attention of the international community from the country's affairs. As might be expected, the two main parties in the

conflict, the armed forces and the rebels, took advantage of the respite afforded by the deterioration of the situation in Zaire to launch new offensives, the former to put an end to the rebellion and the latter to make their presence in Burundi felt even more, while at the same time seeking to establish new bases in Tanzania. This led to increased tensions in the interior and in the provinces abutting on Zaire and Tanzania.

6. In addition to the serious disturbances which took place in Kayanza, Karuzi, Muramvya and Gitega provinces, the most violent clashes were in the south and south-western provinces, particularly Bururi, Makamba, Rutana, Ruyigi and Cankuzo. In Zaire, the fighting seems to have disrupted the rebels' supply sources, causing them to intensify their attacks on the Burundi army at every opportunity. The armed forces for their part are reported to have launched a number of military operations to prevent the rebels from crossing the country and setting up new bases on the other side in Tanzania, near the border with Burundi. The Special Rapporteur was informed of large-scale movements of Burundi army troops and equipment in recent months, at several key points along the border with Tanzania, designed to contain rebel action.

7. In the second half of December and beyond, the rebels reportedly carried out a number of attacks on military positions in the provinces of Rural Bujumbura, Makamba and Bururi, in southern Burundi, and laid numerous ambushes on the RN 3 road, near Lake Nyanza and on the road to Bugarama, which apparently resulted in the death of several civilians and soldiers. The attacks on communes in Bururi province seem to have been intended to undermine the morale of various military officers from that area.

8. Lastly, the RN 3 road from Bujumbura to the south of Burundi in the direction of Rumonge was allegedly the target of numerous ambushes, which demonstrated the increasingly insecure situation in the region. Skirmishes were reported not far from Lake Nyanza in Makumba province. Although the security situation has been improving in the capital for some months, it is not unusual to hear shots in the neighbouring collines, especially to the south-east of Bujumbura.

9. In order to be in a better position to react to rebel manoeuvres, the de facto Government has reportedly reorganized administrative structures in the provinces of Rural Bujumbura, Kayanza, Gitega, Muramvya and Karuzi, where the rebel attacks seem to have been particularly destructive, in order to give the military authorities more control over the population and simplify the administration of these provinces.

10. As the Special Rapporteur noted in his report to the General Assembly (A/51/459, paras. 11 and 12), the intensification of fighting in November and December 1996 fuelled the constant stream of killings and massacres, targeted assassinations, arbitrary arrests, enforced disappearances, looting and acts of banditry and the destruction of private property by both parties to the conflict. Although final responsibility for these gross violations of human rights very often devolves, according to the allegations received, on the armed forces, it is also clear that the rebels are frequently implicated in these acts. Much of the time women, children and the elderly continue to be the innocent victims of this indiscriminate violence, which for the most part

takes place in the absence of witnesses. The Special Rapporteur would like to point out that rebels, Tutsi militias or Tutsi groups from the displaced persons' camps accompanying the military, are all equally guilty of murderous acts that result in grave violations of international humanitarian law and human rights. Once again, he condemns these atrocities most strongly, whoever their perpetrators are.

11. In requesting the de facto authorities to take steps to punish the blunders and the massacres, the Special Rapporteur is seeking, not to single them out, but rather to encourage them to honour the commitments made earlier by the Burundi Government. As he said in his previous report to the General Assembly (see A/51/459, paras. 13 and 14), the violence and the unrest which prevail in Burundi can be attributed to several actors or parties, first and foremost to the armed forces and the security forces, next, to the militias, which are related to them, and, lastly, to an armed opposition that itself comprises various groups. All these actors are responsible, although to varying degrees, for the grave violations of human rights and international humanitarian law which are being perpetrated. It would therefore be unfair to put the rebel groups, no matter what their role in the violence and massacres has been, on the same footing as a State which has ratified the major international instruments on human rights and international humanitarian law and is therefore bound by strict obligations. While these obligations are not, technically speaking, binding to the same extent for the rebels or armed gangs, these groups do, nevertheless, also have an obligation to respect certain humanitarian principles that are part of international customary law and are recognized by all civilized nations. In his earlier reports and statements, the Special Rapporteur has consistently denounced the violence and the atrocities committed by the rebel opposition with the same energy as he has employed to stigmatize the grave violations of human rights by the agents of the Burundi State. However, the Special Rapporteur by no means underestimates the difficulties facing the Burundi army in its confrontations with the rebel groups. 1/

12. The many clashes between the army and the rebels, often attributable to the latter, the size of the forces involved and the fact that during the past year these clashes took place in the main regions of Burundi lead to the conclusion that the country is being torn apart by a veritable civil war (see also E/CN.4/1966/16, para. 10 and A/51/459, para. 12). The clashes which occurred between October and December 1996 showed that the rebels were able to use mortars while the army retaliated with aircraft.

13. Although several testimonies to date suggest that at times the rebels use fairly sophisticated equipment and that their combat logistics have improved, they nevertheless do not yet seem to be strong enough to deal a decisive blow to the Burundi army in conventional combat. The weapons used up to now by the rebels tend largely to be hand-crafted and makeshift, and the injuries they inflict are sometimes very difficult to treat, given the wide variety of projectiles and materials used. However, according to very recent information which has reached the Special Rapporteur, the use of anti-tank mines by the rebels on the earth roads used mainly by military vehicles,

particularly in Rural Bujumbura, Muramvya and Kayanza, which apparently have already caused at least 28 deaths and injured 12 people, both soldiers and civilians, shows beyond any doubt that a new stage has been reached in the balance of forces between the warring parties.

14. During the last three months of the year, the Special Rapporteur noticed that attacks on large numbers of military positions by armed gangs or rebels had continued without a break throughout the country. According to allegations, these attacks had elicited reprisals by the army, most frequently against the civilian population, and had caused numerous casualties among women, children and the elderly. The reprisals almost always followed the same pattern: after a skirmish or the ambush of a military position by a group of rebels, and their immediate withdrawal, the army would respond by pursuing the rebels into the collines, often accompanied by displaced Tutsis who had temporarily left their camps. If they did not find the rebels, they would jointly take it out on the inhabitants of the collines by killing them, looting their possessions or burning their houses. The difficulties the Burundi army is apparently experiencing in locating or capturing the rebels who attack their positions explain the transitional Government's new strategy of identifying the rebels and cutting them off from their supply bases by rounding up the populations of the collines, forcibly if necessary.

15. The Special Rapporteur is nevertheless firmly convinced that the de facto authorities have the means of rectifying the disastrous image of Burundi which prevails among the frontline African countries and other sectors of the international community, by taking the trouble to admit to these serious violations of international humanitarian law and human rights and by conducting serious investigations to unmask and punish the guilty parties. It is to be hoped, however, that the initial investigations requested by the de facto authorities on 1 December concerning the massacre, allegedly committed by the army on 22 October 1996, of 298 returnees who had taken refuge in the Adventist church in Murambi, Buganda commune, Cibitoke province - an allegation initially denied by the commander of the military region in question - will be followed by a detailed inquiry or other similar measures should further massacres be committed by members of the armed forces. The Special Rapporteur was very shocked to learn of allegations that, in Kayanza province alone, some 3,000 civilians were killed by the Burundi army in December 1996. If the Burundi authorities mean to show the international community that the army does not engage in human rights violations of this nature, they absolutely must allow human rights observers as much access as possible to the witnesses and to the scenes of the incidents in question, and facilitate their investigations. Any refusal on their part to admit to certain events or any obstacle placed in the way of the investigations can only go against the de facto Government's basic interests and permanently tarnish its image in the eyes of international public opinion.

16. The Special Rapporteur has followed very closely the activities of the Observer Mission in Burundi which began operations in April-May 1996 and welcomes the excellent relations it has established with the Burundi authorities and in particular with the Ministry of Defence and its general staff, the Ministry of the Interior and Public Security and the Ministry of Justice. To date, despite often very uncertain security conditions, the Observer Mission, which currently comprises 9 observers in Burundi and a

security officer and is awaiting the imminent arrival of another 10, has been able to conduct some 40 investigations in the field, mainly in Bubanza, Bujumbura-Mairie, Rural Bujumbura, Bururi, Cibitoke, Gitega, Kayanza, Muramvya, Muyinga, Ngoyi, Rutana and Ruyigi provinces. The only provinces which the Observer Mission has not yet visited are Cankuzo, Karuzi, Kirundo and Makamba.

B. The continuing stagnation in Burundi

1. A democracy in neutral gear

17. The Special Rapporteur is very concerned about the consequences of the 25 July 1996 coup d'état on the political life of Burundi, quite apart from the trend of the conflict in the country. According to the information he has received, the accession to power of Major Buyoya has radicalized the positions of extremist groups both in political circles and in the army, thus encouraging the increasing militarization of Burundi society.

18. The economic sanctions imposed by the frontline African countries on the de facto Government in order to oblige it to restore the institutions which emerged from the abortive 1993 attempt at democratization, to conclude a cease-fire and engage in serious negotiations with all the parties to the Burundi conflict, have not been very successful. Although the Burundi authorities have restored some of the prerogatives of the National Assembly and lifted the suspension on the activities of the political parties and the political and social associations, they persistently refuse to go back to the Constitution of March 1992, which provided for Burundi's first democratic institutions, or to authorize public demonstrations by the political parties.

19. Furthermore, although the de facto Government has declared its attachment to peace and its openness to negotiations, albeit under certain conditions, it has recently adopted measures which rather tend to indicate a desire to pursue the war and conquer the enemy wherever he may be. The decree-law of 1 December 1996 establishing compulsory national civic service for all citizens, in the form of obligatory unpaid services rendered to the State in areas of public utility or development, including education, national defence, health, social work, the environment and reconstruction, directly affects first-year and second-year university students by preventing them from making a normal start on their courses. Any person refusing to perform civic service is liable to penal servitude of between one month and a year. A second decree-law, dated 24 December 1996, institutes a contribution to national welfare by all physical and legal persons receiving an income from their activities. While a study by the competent services has reportedly been requested to determine the peasant contribution to the war effort, members of the Government and persons with ministerial rank or prerogatives were also asked to make a contribution amounting to FBu 25,000 (approximately US$ 80) each. These initiatives, including the government policy of forcibly resettling large numbers of the Hutu population away from their collines, lead the Special Rapporteur to believe that the behaviour of the de facto authorities is based on a wartime rationale for conquering the rebels and that, every day, it moves further from the path of negotiation. He sees in it absolutely no sign of the beginnings of a Burundi strategy for peace and reconciliation.

20. Within the country, the time has come for national debate among certain Burundians, even before the conditions are right for a cease-fire and negotiations with all the parties to the conflict. Since the Arusha meeting of 12 October 1996 did not lead to the lifting of sanctions against Burundi, the de facto Government has proclaimed its intention of abandoning all negotiations with the rebels until the embargo is removed.

21. Despite the summit with the leaders of the Central African countries held in Brazzaville (Congo) and a meeting among some of the same leaders at a French-African summit at Ougadougou (Upper Volta), early in December 1996, both of which came out in favour of lifting the sanctions against Burundi, the political climate in Burundi has become frankly deplorable. Suspicion is rife among the representatives of the Union pour le progrès national (UPRONA) and the Front pour la démocratie au Burundi (FRODEBU) as a result of the legal proceedings instituted by the Attorney-General against the President of the National Assembly, the Secretary-General of FRODEBU, the chairman of the FRODEBU parliamentary group and several high-ranking military officers, chiefly as a follow-up to the conclusions of the International Commission of Inquiry in Burundi. All these measures have done is destabilize the parties involved, poison their respective relations and relegate all prospects of genuine and constructive dialogue to a distant future. The deposed former President, Sylvestre Ntibantunganya, is still sheltering in the United States Embassy in Bujumbura.

22. The initiatives of former President J. Nyerere, the mediator for Burundi, have reportedly met with an increasingly mixed response in Burundi, ever since many of the supporters of L. Nyangoma, President of the Conseil national pour le défense de la démocratie (CNDD) and members of his armed front, the Forces de la démocratie (FDD), left Zaïre to set up new rebel bases in Tanzania, although their chief has apparently settled in Nairobi (Kenya) for the time being. Former President J. Nyere, who has reportedly received death threats, would thus seem to be having a difficult time in his exacting role of mediator. The President of UPRONA, in a letter of 11 December, apparently rejected the offer of former President Nyerere to go to Arusha to discuss the possibility of peace talks. At the Arusha (Tanzania) meeting, from 12 to 14 December, former President Nyerere met separately with the delegations of UPRONA and FRODEBU, which had no exchanges with each other. While the representatives of UPRONA had had no problems in travelling to Arusha, the two members of FRODEBU - the Governor of Bururi province and the party spokesman - who were to have represented their party at the meeting, found themselves prevented at the last minute from leaving Burundi by the office of the Attorney-General. FRODEBU was finally represented by its President-in-exile in Kenya, Mr. Jean Minani. The de facto Government for its part sent a delegation led by the Minister for Foreign Affairs and Cooperation. The summit meeting in Nairobi on 16 and 17 December 1996 brought together for the first time, in addition to former President Nyerere and the Secretary-General of OAU, other African heads of state, including President Mandela (South Africa) and President Mugabe (Zimbabwe), for discussions on the Great Lakes crisis. On the Burundi front, UPRONA and the Ralliement pour la démocratie et le développement économique et social (RADDES) refused to take part in the meeting, although the President of FRODEBU and some members of CNDD attended it.

23. Lastly, the Special Rapporteur notes that the unilateral announcement of an 11-day truce, instituted by CNDD on 23 December 1996 and accompanied by a warning to the Burundi army not to take advantage of it to attack CNDD positions or redeploy its forces throughout Burundi, on pain of a violent CNDD reaction, did not help in the least to cool tempers. Meanwhile, the Burundi authorities have rejected this offer, which they describe as propaganda.

2. The National Assembly, a threatened phantom?

24. The National Assembly resumed its duties under a decree of 13 September 1996 promulgated by Major Buyoya, but it continues to remain excluded from any substantive debate concerning the transitional regime and is in no state to function normally. Although the de facto Government has lifted the interdiction on Parliament, it has not fully restored the constitutional system or guaranteed certain minimum conditions of operation, so as to allow all members of Parliament to take their seats. The National Assembly has 81 members, 65 from FRODEBU and 16 from UPRONA. It is the latter, whose numbers are sometimes down to 10, who are the only members taking their seats in the National Assembly. The President of the National Assembly, who had taken refuge in the German Embassy and remained there for many weeks reportedly convened a regular session of the Assembly on 17 October 1996; no sooner had it been called to order than it became apparent that, with 36 members present out of 81, it did not have a quorum. As the Special Rapporteur has already said in his report to the General Assembly (see A/51/459, paras. 35 and 36), Parliament has so far been unable to take a decision on any of the urgent problems undermining the country.

25. To date, the transitional authorities have not been able to guarantee the inviolability of members of Parliament, or prevent violations of their safety or that of their families. Some of them have allegedly had their homes searched or have been subjected to legal proceedings. The President of the National Assembly was reportedly closely questioned for seven hours by the Attorney-General on 22 November 1996 with regard to allegations of having taken part in acts of genocide in Rural Bujumbura province, following the events of October 1993. Just after the interrogation, the President of the National Assembly apparently only just escaped an attack on his person planned by the President of the Solidarité Jeunesse pour le défense des minorités (SOJEDEM).

26. The Inter-Parliamentary Union, which recently suspended Burundi's membership, has continued with its investigations into the fate of 31 members of Parliaments, who have been assassinated or have been the victims of assassination attempts, have received death threats or are in exile abroad. At its 96th Conference in Beijing, in September 1996, IPU strongly urged the Burundi authorities immediately to restore the rights of a number of parliamentarians, including Mr. N. Ndihokubwayo, Mr. I. Kubwayo, and Mr. Ndanga, who were refugees or had obtained political asylum abroad, and to take all necessary steps to allow members of Parliament forced into exile to return home without fear for their lives and their personal safety. The Inter-Parliamentary Union also expressed the wish to obtain information on

the situation of another two members of Parliament, Mr. L. Ntibayazi and Mr. F. Banvuginyunvira, who had reportedly sought refuge in an embassy in Bujumbura.

3. An overworked and under-equipped system of justice

27. In the light of the most recent information which has reached him, the Special Rapporteur can only reiterate his deep concern at the almost complete destitution in which the Burundi legal system operates (see also E/CN.4/1996/Add.1, paras. 26-30 and A/51/459, paras. 52-54). The appeals courts, prosecutors and officials working in their services lack everything they need to prepare the case-files of accused and the court hearings; they are without paper, photocopiers, typewriters or means of transport for conducting inquiries or taking detainees from the prison to the court. The state of paralysis at all levels of the Burundi justice system also derives in particular from the lack of trained or qualified personnel. The courses for clerks of the court and other magistrates organized by the office of the United Nations High Commissioner for Human Rights in Burundi, opened in June 1994, are thus extremely useful.

28. The number of persons held in Burundi's various prisons is constantly on the increase. For example, the population of Mpimba central prison went up from 1,725 to 1,853 between October and December 1996. The December statistics supplied by the prison administration to the Observer Mission report 1,615 persons being held in pre-trial detention, while only 181 of those under a death sentence had reportedly been tried. The number of women and young children seems to have increased by only a few individuals.

29. There was a large increase in the population of Gitega central prison, which registered some 545 new prisoners, going from 858 persons in October to 1,403 in December 1996. During the same period, the number of female prisoners increased from 29 to 40.

30. For the most part, these persons appear to have been arrested by security officers without arrest warrants or by means of a simple report of arrest and held arbitrarily, often for more than a year without ever being brought before a judge; nor do they seem to have had access to a lawyer to prepare their defence. The Special Rapporteur was dismayed to learn that many prisoners appear to have undergone cruel, inhuman or degrading treatment, and have even not been properly fed, when held in army or police communal cells before being transferred to a prison. Some prisoners who were apparently violently beaten when they were held in the cells are reported as having died shortly after arrival in prison. In the last few months, Muyinga prison has allegedly had as many as 15 deaths of this type every month.

31. The prisoners (7,525 for the whole country by the end of December 1996, including 6,193 in pre-trial detention), the great majority of whom are Hutus are allegedly charged with participation in the October 1993 massacres. Other charges include murder, assault, looting, membership of armed gangs, attacks on State security, criminal conspiracy, complicity to murder and conspiring to murder.

32. The reform of the legal system in Burundi requested by the Special Rapporteur in his earlier reports (E/CN.4/1996/16, paras. 146-153, E/CN.4/1996/16/Add.1, para. 58 (d) and A/51/459, paras. 72, 73, 79 and 80) is increasingly indispensable to enable the third session of the criminal courts, which began in November 1996, to remedy the blatant shortcomings noted to date and limit the arbitrary element of verdicts (see also the recommendations of the Special Rapporteur in this report, paras. 105, 106 and 110).

4. A seriously ailing economy

33. According to the Burundi authorities, the losses due to the economic sanctions amounted to some US$ 163 million for the whole country at the end of 1996. Since the embargo was imposed, most foodstuffs, including beer and non-alcoholic drinks, have allegedly increased in price by 60 to 150 per cent, mainly because of the devaluation of the currency which took place after the 25 July 1993 coup d'état.

34. The general fuel shortage in Burundi has also caused a very considerable increase in transport costs, not to mention the obstacles to the distribution of seed in the regions most affected by the drop in food production.

35. A recent Food and Agriculture Organization (FAO) report states that the shortfall in agricultural production in 1996 due to the combined effects of the economic sanctions and the civil war is estimated at 53,000 tonnes of cereals, 69,000 tonnes of pulses, 181,000 tonnes of root vegetables and tubers and 123,000 tonnes of various types of banana.

36. However, as the economic sanctions have dragged on, some astute entrepreneurs have apparently succeeded in importing large quantities of fuel from Rwanda and Tanzania in long road convoys (a litre reportedly costs between US$ 2.50 and 3.00 at the present time). There appears to be little difficulty in smuggling many industrial products or consumer goods such as cement, salt and other household and health articles into Burundi from Zambia, Tanzania and Kenya, inter alia via Lake Tanganyika.

II. OBSERVATIONS ON THE HUMAN RIGHTS SITUATION

A. Violations of the right to life and physical integrity

37. Since the allegations which have come to the Special Rapporteur's attention are so numerous, they will be dealt with in the addendum to this report.

B. Enforced disappearances

38. Although it is difficult to give accurate statistics of the number of enforced disappearances thought to have taken place in Burundi in the past year, this phenomenon, which is on the increase, continues to be linked to the conflict which is tearing Burundi apart. Several allegations of disappearances which have reached the Special Rapporteur point to army or police, and sometimes also rebels, involvement.

39. On 10 May 1996, a certain Magnus Nadimurirwo was allegedly arrested near his home, close to a military post in north Mutanga (Bujumbura-Mairie) by the post commander. According to his family, the soldiers on duty that day apparently declared that the arrest had been for routine questioning. According to witnesses, the missing man was killed and buried in the environs of the military post of Gihosha. None of the searches undertaken in the Special Search Brigade (BSR) or the Government Procurator's Office produced any results.

40. On 14 September 1996, a catechist, Macaire Bavumiragira, was allegedly arrested by the chief of the Butihinda area, Muramba commune, Muyinga province. He was taken to the military post at Kamaramagambo and held there for some 12 days, before being transferred to the police and taken to the Muyinga station. His wife apparently went to the station several times to look for him and asked about his whereabouts, but to no avail.

41. In the cases of some of the above-mentioned disappearances, the Observer Mission has been approached by the families of the missing persons or has been in a position to take steps to clarify what happened to them.

42. On 1 November 1996, Ferdinand Nkundwa and his son Geoffoy, returnees from Zaire temporarily in the Gatumba transit camp, were allegedly taken away by soldiers for questioning. They have apparently not been seen since. According to evidence given by other returnees in Gatumba camp, they are among a number of persons who were taken away by soldiers and have disappeared.

43. On 5 November 1996, Melchior Bigirimana and Marc Sindayigaya, both from Muramvya province, and Leonidas Ndayishimiye, from Rutana province, all of them returnees from Zaire, were allegedly arrested by Captain Bashirahishize on arrival at Bujumbura, in the Rohero district. The three returnees apparently passed through Gatumba transit camp and were registered there by the United Nations Office of the High Commissioner for Refugees (UNHCR). Since then, they have apparently not been seen again.

44. On 7 November 1996, Gerolf Désiré Mupenda, an agricultural engineer in Bujumbura, was allegedly kidnapped by the police in the town hall where he had gone to fetch his identity card. His family has apparently had no news of him since then.

45. Also on 7 November, Jean Christophe Bavugirubusa, a civil service editor, was allegedly arrested around 4 a.m. by the BSR gendarmerie, accompanied by the area chief, who had come to search his home at Buyenzi, Bujumbura-Mairie. Later, he seems to have been taken to the BSR station, where his wife apparently saw him the day after his arrest. A few days later, a judicial police officer reportedly informed her that the missing man had been released with another detainee on the evening of 11 November or the morning of 12 November, since when he has apparently not been seen again.

46. On 9 November 1996, Emmanuel Ntahomvukiye, a teacher at Kivoga secondary school, was allegedly arrested by the commune administrator of Mutimbuzi, Muyange colline, Rubirizi district, commune of Mutimbuzi, Rural Bujumbura, suspected of belonging to the rebel groups following the disappearance of the school principal. Since then, his family has apparently had no news of him.

47. On 14 November 1996, Laurence Rusuku, a teacher at Rutegama communal school, was allegedly kidnapped from the Banque commerciale by members of the local municipal police. Her husband had been a FRODEBU party official. Since then, her family reportedly has not seen her again.

48. On 18 November 1996, Mathias Ngendabanykwa, aged 37, the principal of Marumane primary school, commune of Rutegama, Murumvya province, was reportedly arrested on his colline by a military patrol and has not beer seen since. According to witnesses, he was executed on arrival at the military post of the commune.

49. In late November 1996, the beadle of the Pentecostal Church and another couple are said to have been arrested in a café in Mugina commune, Cibitoke province, on suspicion of complicity with rebel groups, and taken to the military post at Mugina. Next day, the soldiers apparently informed their families that all three had been released. Since then, the families have had no news of them.

50. On 30 December 1996, Mr. Ntakanyuma, aged 62, a farmer, is reported to have been arrested by soldiers from the Donzi post, Maramvya sector, Burumbi commune, Bururi province, accompanied by young Tutsi students. The soldiers apparently informed the missing man's family that he had been released, but it seems that he has not been seen since.

C. Obstacles to the right to freedom of movement and freedom to choose one's residence

51. Attacks by the rebels and retaliation by the Burundi military have caused the mass movements or the flight abroad of tens of thousands of persons, of both Hutu and Tutsi origin; the consequences in humanitarian terms were such as to require the rapid intervention of the agencies of the United Nations system or the non-governmental organizations (NGOs) in Burundi. In November alone, some 80,000 Burundians had allegedly fled from the fighting raging in Ruhigi province to temporary refuge in Tanzania, while serious disturbances in Zaire would seem to have forced some 59,000 Burundians, who had found refuge in several different camps since the events of 1993, to return to Burundi. At least 45,000 of them are said to have gone to Cibitoke province, where particularly fierce fighting is reported between the Burundi military and the rebels. It is thus very difficult for the aid organizations to gain access to this region.

52. According to a report by UNICEF, which visited the province on 27 November 1996, approximately 100,000 returnees and displaced persons are living on the plain, without drinking water, since all sources of water, with the exception of a few streams, have been destroyed. Food supply is the other major problem, since the lack of security has seriously compromised sowing for the next harvest while the very late arrival of the rains will have very serious effects on next year's harvest.

53. In addition, between the beginning and the end of November 1996, approximately 15,400 Burundians also seem to have hurriedly left certain refugee camps in Southern Kivu and crossed Cibitoke province to the transit camp at Gatumba, a few kilometres from Bujumbura, not far from the

Burundi-Zaire border. The Observer Mission in Burundi picked up alarming accounts of dozens of persons having been killed crossing the Zaire-Burundi border, not far from Gatuma. During the same period, approximately 5,000 Burundians settled in Zaire are reported to have crossed Lake Tanganyika to seek refuge in Tanzania.

54. At the same time, the arrival of large numbers of returnees from Zaire meant that they tended to concentrate at specific points in the country. Early in November, the de facto authorities established an inter-ministerial committee for the local settlement of Burundi returnees, with a view to resettling these people in their original provinces and communes from the Gatumba transit camp. Apparently, the returnees were gradually sent to Bujumbura-Mairie and then to Rural Bujumbura, Bubanza and Cibitoke. However, alarming reports reached the Special Rapporteur about the state of exhaustion of a large number of returnees from Kivu, who had covered about 150 km on foot in 15 days. Serious cases of kwashiorkor, bloody diarrhoea and serious malnutrition were apparently identified. The Special Rapporteur is extremely concerned about returning these vulnerable population groups to provinces like Cibitoke or Bubanza which have been severely affected by the conflict, have no drinking water and are prevented from obtaining the various forms of assistance from the United Nations system or the international NGOs because of the insecure situation.

55. The Special Rapporteur nevertheless feels that these successive waves of returnees seriously jeopardize the survival of vulnerable population groups who are often sent back without due consideration to conflict zones, unprovided with medical assistance or adequate food. Other more appropriate solutions urgently need to be found, therefore, in order to put an end to repatriation of this nature when it takes place under duress.

56. Still more alarming is the policy of forcibly herding people into camps; this is being done by the de facto Government in several provinces with the self-confessed aim of keeping tighter control over the population groups and cutting the rebels off from their supply and recruitment bases. During December 1996, a large number of collines in the provinces of Karuzi, Bubanza, Cibitoke and Ruyigi have reportedly been emptied of their inhabitants. It is reported that persons refusing to submit to this policy find themselves rapidly accused of complicity with the rebels and treated as enemies. Yet, agreeing to go to the camps set up for them would mean losing the confidence of the rebels and their supporters. The situation in Karuzi province during the second half of December was particularly difficult, since the population groups that the authorities are said to have tried to force into the camps came precisely from communes in which the rebels apparently had numerous supporters. The Burundi authorities are reportedly considering further initiatives of this type in other provinces, so as to protect civilians from the machinations of the rebels and identify the latter.

57. Between late November and early December 1996, the number of displaced persons in Burundi increased suddenly and sharply, mainly because of the authorities' policy of moving certain population groups from the collines into camps and because of the intensification of the fighting in which civilians reportedly found themselves caught in the crossfire between the rebels and the army. Some sources suggest that up to 200,000 Burundians of Hutu origin, or

even more, may have already been forced into these makeshift camps. In addition, people flee from the fighting and hide in the environs of their homes. In Rural Bujumbura, it is reported that dozens of people in a state of advanced malnutrition have little by little emerged from the forest where they had been hiding for months in very precarious conditions. Several NGOs have suggested that large numbers of Burundians may have made for Rwanda to escape the violence sweeping Cibitoke province.

D. Obstacles to freedom of expression and freedom of the press

58. The excesses of the private press to which the Special Rapporteur alluded in his first report (see E/CN.4/1996/16, paras. 110-117) finally led the national Communications Council to take the sector in hand. Under a decision of 18 March 1996, this press regulatory body suspended seven publications until further notice and ordered them to comply with the rules of ethics of their profession and provide rapid and tangible evidence of having done so if they hoped to appear again.

59. Apart from one or two publications which have subsequently obtained the approval of the competent authorities to resume operations, the press now seems to be going through a very difficult phase. Since the change of regime on 25 July 1996, no newspapers have been put on sale at news-stands, with the exception of a few irregular issues of the Catholic monthly Ndongozi in the national language and the bimonthly Intahe (UPRONA). The above-mentioned difficulties were exacerbated by frequent electricity cuts in the capital and the chronic indebtedness of the newspapers to Bujumbura's two main printers. In recent months, however, it would seem to be the upheavals resulting from the temporary suspension of the political parties which have affected most of the political party newspapers, whether official or unofficial, such as L'Aube de la démocratie for FRODEBU, L'Indépendant for UPRONA, La Nation for the Parti pour le redressement national (PARENA), Le Carrefour des idées (UPRONA and PARENA extremists) or La Liberté for UPRONA. A publication like Le Phare-Panafrica allegedly received assistance from Reporters sans frontières up to the end of June 1996.

60. In November 1996, three newspapers which had just appeared on the capital's news-stands were reportedly seized the same day by the Documentation Service on the pretext that they had not complied with the terms of article 24 of the Burundi Press Act of 26 November 1996 with respect to the deadline for statutory deposit (24 hours for periodicals and 4 hours for daily newspapers) with the Ministry of the Interior or the Governor of the province where the publication is based. On 12 and 16 December 1996, the Minister of the Interior and Public Security allegedly called the newspaper editors and the national Communications Council to order, accusing the former of jeopardizing Burundi's national unity, public order, morals and sovereignty and asking the latter to use its authority to bring the editors of publications back to the straight and narrow, failing which the full force of the law would be brought to bear.

61. Since then, the private press has continued to be subject to close scrutiny by the Documentation Service, which apparently makes frequent visits to printers. The cost of producing newspapers is reported to have increased steeply, not so much because of the continuing embargo as because of the

abolition of state subsidies and the drop in earnings from advertising. In the light of the most recent information which has reached him, the Special Rapporteur very much hopes that the UNESCO project to open a Press Centre at Bujumbura will come to fruition very soon, so as to help the Burundi press to overcome the discouraging deadlock in which it currently finds itself.

E. Violations of the right to an adequate standard of living and the right to health

62. The civil war in Burundi has had a disastrous effect on the food security of the Burundi people. In a recent report, FAO estimates that the total food production in the country will be 3.5 million tonnes in 1996, which represents a 3 per cent drop in comparison with 1995 and 4 per cent in comparison with the period from 1988 to 1993.

63. "Normal" harvests are expected in the provinces of Kayanza, Ngozi, Kirundo, Muyinga and Cankuzo. Other provinces such as Gitega, Muramvya, Rutana, Ruyigi, Makamba and Bujumbura are already said to be showing tangible signs of food deficit as a result of the harvests of 1996, which were inadequate because of unfavourable climatic conditions. Finally, provinces such as Bubanza, Cibitoke and Karuzi are being hit by serious shortages as a direct result of the conflict.

64. Because the insecurity and hazards of combat have driven many population groups from their natural habitat, the agricultural cycle was seriously disrupted throughout 1996. After being displaced or forced to move to certain areas, people may have to walk very long distances to cultivate their fields. This deterioration in the peasants' living conditions is compounded by the sometimes insurmountable difficulties encountered by the humanitarian organizations in bringing food aid to needy population groups. In the province of Karuzi alone, food production is said to have dropped by 50 per cent, causing recognized symptoms of malnutrition among the women and children. According to information received by the Special Rapporteur, it is not uncommon in some provinces to find children with bloated stomachs and discoloured hair. The malnutrition index for the country as a whole is said to have risen from 6 per cent to 12 per cent.

65. The sanctions have had a serious impact on the food security of the Burundi people. As food imports have been frozen because of the embargo, the entire population of the country is suffering, particularly the vulnerable groups such as those who have been displaced or dispersed. Despite repeated requests to the sanctions committee established in Nairobi, commercial imports of fertilizer are reported to have completely stopped. Although FAO authorized the delivery of 4,000 tonnes of fertilizer to the country, only half that amount, sparingly distributed, has been received to date. It has not been possible to order any insecticides. Used principally in coffee-growing, the lack of insecticides will have a drastic effect on an essential sector of the country's economy and deprive the people dependent on it of their income.

F. Violations of the right to education

66. According to the information available to the Special Rapporteur, the Burundi education system, both public and private, has been severely affected by the crisis and conflict that are tearing the country apart.

67. In certain primarily Hutu areas, many school, health and social infrastructures have been completely destroyed, leaving large groups of children with no schools, clinics or hospitals for treatment of illness or injury and with no means of obtaining school supplies or first-aid equipment and medicines. Teachers, parents and children often die in the violence and disturbances that have been spreading from province to province, leading to the abandonment of the communes' schools. Elsewhere, lack of teachers' and orphans' despondency combine to empty the schools. In the provinces containing Tutsi displaced persons' camps, the camps' inhabitants are often housed in former school or administrative buildings, further aggravating the school shortage.

68. The sanctions against Burundi are seen as contributing to the widespread impoverishment of the Burundi education system, as the lack of fuel is preventing boarding schools throughout the country, which are attended by young State scholarship holders at the secondary level (only 10 to 20 per cent of Burundian youth have access to them), from receiving food and school supplies. The World Food Programme (WFP) may soon be unable to continue distributing foodstuffs to these boarding schools as developments in the situation might cause it to reorder its priorities. This would put the young Tutsi and Hutu in a most difficult position, as these establishments are also places of refuge and relative security for them, especially when they must transit through regions that are reputed to be very dangerous. The situation is said to be just as dangerous for the pupils of communal high schools in areas of conflict where insecurity is reportedly preventing them from travelling back and forth between their homes and their commune's school.

69. There was reportedly a mixed reception among education circles in the country to the introduction by the Burundi authorities of civic service last December. Some saw it as a way of subduing particularly unruly youths in the weeks preceding the July 1996 coup d'état or of protecting them from extremist politicians' adventurism. Others believe that the purpose of the service is to enable the security forces to reinforce their ranks in order to combat the armed militias of either Hutu or Tutsi allegiance, which are supported by extremists. A number of young people are said to have willingly taken the tests for enrolment in the army, while others wished to leave the civic service soon as possible, fearing for their lives. In the university sector, mandatory civic service will deprive first-year and second-year students of any possibility of attending classes normally. For all of 1997, only third-year and fourth-year students will be attending the university.

70. The Special Rapporteur is most disturbed by the intolerable violations of the right of every Burundi child and adolescent to go to primary school, high school or university. Burundi is depriving itself of key sectors of its society which are, sorely needed to lead the country out of crisis.

71. Many teaching tools and materials cannot be used because of the lack of maintenance or repair equipment. Inflation has caused prices of some items to soar, in some cases by up to 100 per cent of their value.

72. The new school year began quite late in many regions of the country, with delays of up to four weeks or even more in some cases. The authorities were thus forced to shorten the Christmas vacation to five days, instead of the two weeks originally planned.

III. FINAL OBSERVATIONS AND RECOMMENDATIONS

A. Final observations

73. In his report to the General Assembly, the Special Rapporteur stressed the importance of democracy as a condition sine qua non of respect for and enjoyment of human rights (see A/51/459, para. 37). On the basis of this principle, the Special Rapporteur wishes to reiterate that a new institutional regime, even a transitional one, cannot be defined unilaterally by the new de facto authorities, but requires a genuine democratic dialogue extending to all political parties and components of Burundi society.

74. The Special Rapporteur has noted the press release issued by the Organization of African Unity on 5 August 1996, in which the Central Organ of the OAU Mechanism for Conflict Prevention, Management and Resolution requested the Bujumbura regime to take immediate steps to put an end to illegality and restore the constitutional order of Burundi. In his previous report to the General Assembly (see A/51/459, para. 40) the Special Rapporteur applauded the determination of those African countries which decided to impose economic sanctions against Burundi because he believed, first of all, that democracy had been strengthened in Central Africa in recent years, and that its leaders, fortified by the recent democratic elections in their respective countries, would no longer tolerate coups d'état, which they saw as direct threats to the stability of the Great Lakes region. If, in the words of the former Special Representative of the Secretary-General for Burundi, Mr. Ould Abdallah, democracy in Africa has become inevitable, that does not mean that a long period of transition will not be necessary in order to achieve true power sharing. 2/ The Special Rapporteur cherished the hope that those measures would rapidly lead the Burundi authorities to provide tangible signs of their willingness to meet the demands of the countries which ordered the embargo: return to constitutional order, an end to the massacres and violence, conclusion of a cease-fire, institution of a national debate with the participation of all Burundians and initiation of serious negotiations among all the parties to the conflict in Burundi.

75. From the beginning of the embargo and throughout recent months, however, the Special Rapporteur has been concerned about the harmful effects of the economic sanctions on various vulnerable population groups, such as displaced persons or dispersed groups, returnees, hospital patients, the mentally ill and orphans, whose existence depends heavily on the humanitarian assistance provided by United Nations agencies and various NGOs. He made it clear in his previous report to the General Assembly that those measures were beginning to have a real impact on the people in the towns, particularly the urban elite, and that they were adding to the suffering in rural areas, where people are

often poor and where, owing to the violence and the civil war, regular access to, inter alia, health care, hygiene, various essential goods and primary and secondary education have become even more curtailed.

76. The Special Rapporteur was relieved to hear that the sanctions committee established in Nairobi had agreed on 6 September 1996 to make some concessions in order to enable the United Nations agencies to continue their humanitarian work, by authorizing exceptions in respect of baby food, health articles for hospitals, laboratory equipment, kerosene to supply the cold chains, fuel and communications equipment. He has taken note of the first deliveries, to WFP, FAO and WHO, to replenish their respective supplies of foodstuffs, grains, fertilizer, vaccines and transfusion equipment, despite the fact that these agencies encountered various logistical and administrative obstacles hindering the transport of the awaited items by road or boat from Rwanda and Tanzania.

77. Despite the relaxation of the sanctions for well-founded humanitarian reasons, however, the Special Rapporteur is forced to note that the continuation of the embargo is only exacerbating the already very difficult, nutritional and health conditions of the majority of the Burundi population. The vulnerable groups mentioned earlier, and more generally women, children and old people, have less and less access to humanitarian assistance.

78. In addition, the effects of the sanctions are continuing to weigh heavily on all of the humanitarian agencies operating in Burundi, despite the concessions agreed to by the sanctions committee, and are harming the quality or quantity of the foodstuffs and other relief supplies, as well as delaying the authorized operations. Although the United Nations agencies and the diplomatic community were eventually able to obtain delivery of a minimum of fuel and kerosene for transport and the maintenance of cold chains, the same cannot be said of the NGOs. Their assistance programmes, like those of the United Nations agencies, were adversely affected by delays in the supply of drinking water. The consequences of the lack of fuel, combined with the electricity shortage in the capital, occasionally forced some humanitarian agencies to use a considerable portion of their fuel reserves to run their office generators. The agricultural sector has also been adversely affected. If extra seeds and fertilizer are not distributed without fail in the coming weeks to peasants throughout the country to provide for the next harvest, a drop of at least 40 per cent in agricultural production should be expected during this period.

79. Without dwelling further on the question of economic sanctions, the Special Rapporteur nevertheless notes that, besides their adverse impact on the living conditions of the Burundi population, the sanctions have in no way attained their goals, namely to bring sufficient pressure to bear on the de facto Government so that it will bring back the rule of law and constitutional order to Burundi, put an end to the conflict and violence that are tearing the country apart and restore peace, as the indispensable prerequisite for any process of dialogue, democratization and reconciliation in the country.

80. The Special Rapporteur has unfortunately not observed any significant change of attitude to date by the de facto authorities towards the serious violations of international humanitarian law and human rights being committed

by the military or by ordinary Burundian citizens. On the contrary, the authorities are having difficulty in promoting a policy of transparency based on their duty to investigate these allegations of violations or in speaking out with a single voice in Bujumbura or in the provinces whenever the incidents in question occur.

81. Despite the insecurity and precarious balance of terror that have marked three years of civil war in Burundi, it still has an organized Government that is capable of acting, unlike other countries torn apart by internal conflicts. The country also has modern managers belonging to both of its principal ethnic communities, who have obtained their diplomas at renowned foreign universities, and some of whom are presently occupying posts in the de facto Government. It is precisely this operational capacity that Burundi most needs to properly manage the affairs of State, at a time when the country is sinking into a crisis that is more and more difficult to control.

82. In the opinion of the Special Rapporteur, the situation in the Great Lakes region remains explosive and is affecting tens, even hundreds, of thousands of refugees, displaced persons and civilians in Zaire, Burundi and Rwanda. It has long been known that the region is inundated with personal firearms, despite the international community's numerous promises to end the traffic. The scale of the slaughter already committed by all the parties to the conflict in Burundi for reasons of vengeance or reprisals indicates that further arms supplies will simply exacerbate the conflict and lead to further atrocities. 3/ Firearms from a dozen countries located on nearly all the continents have reportedly been found distributed throughout the region.

83. The Special Rapporteur is particularly disturbed by information received indicating that the exiled chiefs, who are members of the former armed forces or Rwandan militias, have obtained firearms and continued their military training in refugee camps, despite the embargo on the sale of arms. The information gathered indicates that arms distribution and the military training that goes with it have not decreased in the Great Lakes region.

84. Following the recommendation to the Security Council in his report to the General Assembly, to consider the possibility of immediately setting up an international court to prosecute those who ordered and carried out the assassination of President Ndadaye, the genocide against the Tutsis and the ensuing massacres of the Hutus (see A/51/459, para. 79), the Special Rapporteur welcomes the request made by the de facto Burundi authorities to the Secretary-General to that effect in a letter dated 23 October 1996.

85. In the Special Rapporteur's view, there is no isolated solution to the Burundi problem outside its regional context. It is essential to reach a negotiated solution to the crisis in the Great Lakes region as a whole. The lack of a concerted policy at the international level has been one of the main factors underlying the crisis in the last few months. The humanitarian assistance provided by the international community has concealed the fact that it has persistently neglected to find an effective way of bringing Governments in the region to the negotiating table so as to conclude a regional political settlement. It is disturbing to note in this connection that the development assistance with which Burundi has been provided in the last three years has

dropped from 1.5 billion French francs to only 350 million French francs, on an emergency assistance basis. 4/ It will also be noted that more extensive economic integration among the countries of the region is proving to be more and more necessary in order to offset the devastating effects of demographic pressure in these countries, which is the source of so many of the tensions in their societies.

86. It is therefore more necessary than ever to reach a political settlement in the Great Lakes region which will take the root causes of the prevailing instability into account. The recent events in Zaire are symptomatic of a much broader crisis affecting the region, as the Special Rapporteur has consistently indicated since the beginning of his mandate. This tragic development is partly the result of the inability of the Governments concerned - not to speak of the international community - to design strategies for responding effectively to the constellation of political, economic and social problems that were at the root of the tensions observed in the last quarter of 1996. The Special Rapporteur wishes to address a strong warning to the authorities of the countries of the Great Lakes region and to the international community that crises similar to the one just mentioned could well recur. Such crises will merely increase the instability of the countries of the region and the many potential consequences, which will be more and more difficult to control if general coordination and serious negotiations do not succeed in bringing together the States principally involved to overcome the ills afflicting their respective countries, namely impunity, the question of genocide, whose nature and extent vary according to the countries in question, and poverty.

87. To eradicate these ills, a set of measures must urgently be devised for the thorough reform of the administration of justice in the various countries concerned and the introduction of effective mechanisms for the protection and promotion of the human rights that continue to be systematically flouted; the development of regional agreements on nationality, citizenship, refugee status, the questions of domicile and migration for economic reasons, which are permanent features of the region; the eradication of poverty through economic measures aimed at rehabilitating the inhabitants of the region to facilitate a return to stability and to living conditions and security conditions that are acceptable to all; limiting the consequences of the weapons build-up and the presence in certain countries of armed groups bent on destabilizing neighbouring territories; finally, helping the Governments in question to formulate responsible State policies that break with all previous forms of exclusion and seek to reflect the interests of their respective societies, including their minorities. Humanitarian assistance may help save human lives, but it will never replace the democratic mechanisms of a political will to seek solutions to structural problems.

88. The Special Rapporteur placed great hopes in the establishment of a multinational force, as announced in Security Council resolution 1078 (1996) and mandated by the Council on 9 November 1996, under Chapter VII of the Charter of the United Nations, to facilitate humanitarian operations in eastern Zaire. With the logistical means available to it, this force, which had been advocated by the OAU and initially designed to be set up in Kivu, would have been able to locate more rapidly the hordes of refugees spread throughout the hostile areas bordering Kivu on the west, and then to exert a

restraining, perhaps even dissuasive, influence on certain participants in the Burundi conflict. The Special Rapporteur thus deeply regrets the fact that the States which had formed the nucleus of this multinational force were forced to break off their concerted efforts, after spending weeks setting up a base at Entebbe (Uganda), owing to the lack of sufficient political support from the international community and to Rwanda's repeated opposition to the undertaking. Burundi also made it clear that it would not authorize this force to use its territory to open humanitarian corridors until the economic sanctions against its country were lifted.

B. Recommendations

89. In submitting this report to the fifty-third session of the Commission on Human Rights, the Special Rapporteur wishes urgently to draw the attention of the de facto Burundi authorities and the international community to the following recommendations, in addition to those contained in his first report (E/CN.4/1996/16, paras. 144 to 170), in the addendum to that report (E/CN.4/1996/16/Add.1, paras. 57 to 72) and in his report to the General Assembly (A/51/459, paras. 59 to 81), in view of the continuing and most alarming deterioration in the situation of human rights in Burundi. Is the time not long overdue for the Burundi leaders and main actors of the international community in Burundi and the Great Lakes region to develop a clear idea of what is at stake and the dangers involved and agree on a concerted and comprehensive strategy for restoring peace to Burundi and the neighbouring countries?

1. Action at the national level

90. The Special Rapporteur urgently appeals to the Burundi leaders to make an active commitment, together with all the components of Burundi society, to restoring democracy in the country. The Special Rapporteur ventures to remind them that there can be no lasting peace in Burundi until an equitable solution is found to the crucial problem of power-sharing between the minority and majority on a concrete and realistic basis, providing the minority with sound and genuine guarantees and ensuring that the rights of the majority are firmly respected, in order to overcome the deep-rooted socio-economic inequalities from which Burundi society continues to suffer.

91. As 1997 begins, the Special Rapporteur is convinced that it is more indispensable than ever to have a genuine dialogue of substance between all the parties to the Burundi conflict, including those who are currently outside Burundi, so as to achieve agreement on negotiations under the sponsorship of the United Nations and the OAU.

92. The Special Rapporteur wishes to repeat his urgent request to the de facto authorities to put an immediate end to the violence and massacres occurring throughout the country and find and prosecute those responsible. He also urges them to spare no effort to prevent the Burundi army and security forces from carrying out extrajudicial or summary executions, enforced disappearances or arbitrary arrests accompanied by ill-treatment. He also most firmly requests the authorities and general staff of the army and security forces publicly to instruct their subordinates about the absolute need to put an immediate end to the massacres of unarmed civilians - mostly

women, children and old people - committed most often by military personnel, at times accompanied by Tutsi displaced persons or militia members.

93. If necessary, the members of the armed forces should know that they have the right to refuse to carry out orders that will result in slaughter. As in his previous report to the General Assembly (see A/51/459, para. 68), the Special Rapporteur calls upon the de facto authorities to establish a firm chain of command within the army and the security forces, so that senior officers bear real responsibility for abusive acts committed by their subordinates. Military personnel, whether commissioned or non-commissioned officers, should be stripped of their rank when their involvement in such acts has been proved.

94. The Special Rapporteur also appeals to the rebel leaders to exercise their sense of responsibility and ensure that clashes between their groups and the Burundi army, which often produce numerous civilian casualties, are conducted with respect for certain basic humanitarian rules of customary international law and that any atrocities are severely punished.

95. In the Special Rapporteur's view, if the Government wants to convince the international community that the military neither encourages nor tolerates serious violations of human rights, it is essential for it to afford observers the freedom of movement they need to investigate the alleged incidents reported to them. The Special Rapporteur wishes to commend the willingness repeatedly expressed by the de facto authorities to accept a considerable increase in the number of observers in Burundi, which was initially set at 35 by the High Commissioner for Human Rights. For his part, he fervently hopes that the Observer Mission will rapidly increase its staff in the provinces of the country where serious human rights violations are occurring, despite the prevailing insecurity.

96. The Special Rapporteur urges the de facto Government to provide the results, as promised by Major Buyoya, of the investigation into allegations of the expulsion manu militari of 392 Burundi refugees in Rwanda to Cibitoke province, on 30 September 1996, by soldiers of the Rwandan Patriotic Front, at a time when numerous violations of human rights were being reported in that region. Fears were reportedly expressed for the lives and physical integrity of these Burundian refugees if they were deported to their country. The joint appeal on their behalf by the Special Rapporteur and the Special Rapporteur on extrajudicial, summary and arbitrary executions, of 24 October 1996, has received no reply to date.

97. The Special Rapporteur is still waiting for the de facto Government to publish the results of an independent, neutral, objective and complete investigation into the exact circumstances of the murder of three ICRC delegates on 4 June 1996, near Mugina, Cibitoke province, and to clearly establish who was responsible. The Special Rapporteur will not be satisfied unless those responsible for this heinous crime are prosecuted and appropriately punished. The Special Rapporteur also awaits accurate information from the Burundi authorities on the circumstances surrounding the tragic murder of the Archbishop of Gitega, Mgr. Ruhuna, on 9 September 1996, and of the two nuns accompanying him, and asks that those responsible for these crimes be found and arrested without delay.

98. The Special Rapporteur stresses heavily the need for the de facto Government to provide the NGOs with adequate security without which they will not be able to continue to help vulnerable groups of the Burundi population, which has already suffered so much as a result of the conflict and the economic sanctions imposed on the country (also see A/51/459, para. 55).

99. The Special Rapporteur urges the de facto Government to provide returnees with guarantees against any attempt at murder or summary execution or any other form of threat to their physical integrity. He is firmly opposed to any Government policy that would lead to the establishment of displaced persons camps in the country, whether Hutu or Tutsi, even if the reasons for grouping them together are different. In his view, this would create further tension and feelings of hatred and exclusion within Burundi society, which would hardly be conducive to national reconciliation, as well as increased difficulties for United Nations agencies and other international assistance organizations who would become ensnared in the Burundi Government's contradictions.

100. The Special Rapporteur calls urgently on the de facto Government to negotiate a cease-fire with the other parties to the conflict in Burundi without delay, to be followed by a series of peace conferences to lead as soon as possible to the opening of the national debate so long awaited by the Burundi people, on the basis of the report submitted by the Technical Commission to the President of the Republic in December 1996.

101. The Special Rapporteur is convinced that the recommendations in this report will enable the authorities to respond to some of the country's basic problems, such as reconstructing the judicial apparatus; formulating adequate strategies for putting an end to impunity; reorganizing the functions of the army and security forces along quite separate lines; defining broader forms of participation by the Burundi people in the political debate; devising, in terms that are equitable and acceptable to the country's two main ethnic communities, a form of power-sharing that has the potential to lead to a democratic political system, whose development will also benefit from contributions by Burundi's traditional institutions and political culture.

102. The Special Rapporteur expects the de facto authorities to embark urgently and without further delay on the reforms which he called for in his previous reports with respect to the Burundi army and security forces, the judicial system and primary and secondary education, so as to facilitate access to the various State institutions by the majority of the people, who are currently excluded from the country's elite (see E/CN.4/1996/16, paras. 146, 150 and 156; E/CN.4/1996/16/Add.1, para. 58; and A/51/459, para. 61).

103. The Special Rapporteur requests the de facto Government to lift the restrictions on political freedoms and to take adequate measures to prevent violations of the rights to life, physical integrity and freedom of opinion, with no discrimination whatsoever. The Special Rapporteur is convinced that the exercise of all these rights is essential for providing an atmosphere conducive to a reduction of tensions in preparation for a national debate and the establishment of a genuine constitutional State, which will require setting clear benchmarks along the road to democratization.

104. The Special Rapporteur urges the de facto authorities to protect the parliamentarians' physical integrity, to halt the criminal proceedings against some of them, to establish the appropriate conditions for the return of parliamentarians exiled in the United Republic of Tanzania, Zaire and Kenya and to ensure that the National Assembly receives the constitutional guarantees it needs in order to sit.

105. The Special Rapporteur calls urgently on the de facto Government to defer the 89 death sentences and 36 sentences of life imprisonment handed down during the first two sessions of the criminal chambers held in February-March and June 1996, as well as the other 23 death sentences, at the least, and the 13 sentences of life imprisonment reportedly handed down at the third session, which began in November 1996. The Special Rapporteur could not accept the execution of such sentences, when those convicted were provided with none of the judicial guarantees to which they were entitled, in particular the assistance of a legal adviser or lawyer during their trial. The campaign against impunity which the authorities wish to undertake would in no way be helped by the execution of the above-mentioned sentences.

106. Although fully aware of the particularly difficult conditions in which Burundi's judicial system is operating, the Special Rapporteur believes it his duty to recommend that the authorities ensure respect for articles 10 and 11 of the Universal Declaration of Human Rights, which stipulate that every accused person is entitled to a fair trial, including the right to be guaranteed legal assistance for his defence. He also urgently draws their attention to articles 6 (2), 14 and 15 of the International Covenant on Civil and Political Rights, which stipulate that sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of commission of the crime, following a fair trial, and to other United Nations resolutions establishing guarantees for the protection of the rights of persons liable to the death penalty.

2. Action at the international level

107. The Special Rapporteur reiterates his congratulations to the former Secretary-General of the United Nations, Mr. Boutros Boutros-Ghali, the Secretary-General of the OAU and former President Nyerere on their untiring efforts to find a solution to the Burundi crisis and on doing their utmost to prevent it. In this regard, former President Nyerere should be warmly encouraged to continue his good offices with the aim of engaging all the parties to the Burundi conflict in a constructive dialogue leading to concrete negotiations which will bring peace and national reconciliation.

108. The Special Rapporteur would also like to warmly congratulate the new Secretary-General, Mr. Kofi Annan, on his appointment to the highest post in the United Nations, and expresses the fervent hope that, under his leadership, the conflict in Burundi and the crisis afflicting the Great Lakes region will finally be quelled and peacefully settled as all hope.

109. While he realizes that the opening of negotiations among all the parties to the Burundi conflict should not be subject to any prior condition, the Special Rapporteur believes that a joint declaration addressed to them from former President Nyerere, as mediator, and other heads of State of the region,

would help to advance the cause of peace in Burundi. Such a declaration might be structured around the following points: (a) the goal of the negotiations is to end the violence, provide sound guarantees to all the parties to the conflict and assure them that there will be no more ethnic massacres now or in future; (b) negotiations under the auspices of the United Nations, the OAU and the heads of State of the region are likely to provide stronger guarantees against a future genocide than unilateral declarations from each of the parties to the conflict; (c) the acceptance of a cease-fire as a first step towards ending the violence in the country, together with a peace-keeping force if necessary, should be the first item on the agenda of the negotiations.

110. The Special Rapporteur urges the international community to allocate more resources for financing the legal assistance programme being established by the High Commissioner for Human Rights, with assistance from foreign lawyers, to provide the justice system in Burundi with means that are commensurate with the challenge facing the judicial system. The Government can hardly be asked to make major improvements in its operations without simultaneously being given substantial assistance and cooperation by the international community. The support programme in question is aimed at enabling the Burundi justice system to play its role as the regulator of society by resuming its activities to combat impunity and foster a more equitable dialogue among the main components of Burundi society. The first three foreign lawyers are expected to arrive in Burundi during February 1997, to support their Burundian colleagues in defending accused persons whose cases are to be examined during the third session of the criminal chambers in Bujumbura, Gitega and Ngozi (see also A/51/459, paras. 52-54).

111. The Special Rapporteur urges the States of the Great Lakes region to ensure that their territory is not used by armed groups as a base from which to launch raids or attacks against another State in violation of the principles of international law and the Charter of the United Nations. He strongly encourages them to honour the commitments which they assumed during the Tunis Summit on 18 March 1996, especially their pledge to stamp out arms traffic and prohibit the military training of the rebel groups with a view to armed border raids. He fervently hopes that the threat which the illegal and uncontrolled movements of arms and related materiel pose to peace and stability in the Great Lakes region will be eliminated. He therefore proposes that a general moratorium on arms sales should be imposed on the countries of the Great Lakes region by the OAU. It would be a favourable sign for this moratorium to be supported by the leaders of the countries of the region which have recently shown their commitment to democracy in connection with the conflict in Burundi.

112. The Special Rapporteur requests an immediate embargo on the sale of arms to Burundi. Such an embargo should be directed both at the de facto Government and the rebel forces to prevent all arms flows towards the parties to the conflict in Burundi.

113. States Members of the United Nations should be encouraged to take legal measures against their citizens who are involved in the arms traffic, in violation of the embargo declared by the United Nations, even when such individuals are operating in a third country. If national legislation does

not contain the provisions required to punish such offences, the Governments of the Great Lakes region should be strongly urged to enact internal legislation for the prosecution of those responsible for such offences. Priority should be given to preventing, by all available means, any unsupervised distribution of arms shipments in the Great Lakes region, in order to avoid a disastrous escalation of violations of human rights and international humanitarian law.

114. As he stated in a previous report (see E/CN.4/1996/16/Add.1, para.70), the Special Rapporteur would like very strong measures to be taken against those who ordered the crimes and those benefiting from the arms traffic. He requests that their bank accounts abroad should be frozen, fellowships withheld from the members of their families and visas for travel abroad refused them.

115. The United Nations and the Organization of African Unity should not delay in demonstrating their mutual political will to pursue a sustained cooperation effort in the wake of the good offices of the Secretary-General's Special Envoy, Mr. Raymond Chrétien, Ambassador of Canada to the United States, in attempting to resolve the crisis in Zaire in November 1996. Without the certainty of long-term cooperation, the international community has little chance of keeping alive the hopes raised by the Special Envoy's visit to the Great Lakes region. The Special Rapporteur welcomes the recent announcement by the new Secretary-General that he will appoint a Special Representative for the Great Lakes region, to be based in Nairobi. The Special Representative would thus have the opportunity to visit the various leaders in the region, as necessary, and to develop working relations with them which will favour a concerted approach to, and a comprehensive settlement of, the problems of the subregion.

116. The Special Rapporteur believes that it is now more necessary than ever to ask the United Nations to convene a regional conference on peace, security and development in the Great Lakes region. Meanwhile, he firmly reiterates the recommendation contained in the addendum to the report he submitted to the fifty-second session of the Commission on Human Rights (E/CN.4/1996/16/Add.1, para. 60). In it he asked the international community, particularly the countries of the European Union, those of the Organization of African Unity, the Secretary-General of the United Nations, his special envoys or representatives and the Security Council, the High Commissioner for Human Rights and his office at Bujumbura, together with the international non-governmental assistance organizations or humanitarian institutions active on the spot, to agree very quickly upon a coordinated and comprehensive strategy addressing the whole range of problems currently besetting Burundi, bearing always in mind the present sufferings of the Burundi population and the concern for putting an end to them.

117. In view of the accelerated deterioration of the situation in Burundi and the current crisis afflicting the Great Lakes region, the Special Rapporteur strongly recommends that, during the fifty-third session of the Commission on Human Rights, a special day should be devoted to considering all the problems confronting the subregion, culminating in the adoption of a joint resolution, in accordance with the wish expressed by the three Special Rapporteurs on the situation of human rights in Burundi, Rwanda and Zaire.

Notes

1/ Rodley, Nigel, "Can armed opposition groups violate human rights?", Kathleen E. Mahoney and Paul Mahoney, Human Rights in the Twenty-First Century, Dordrecht, Boston, London, Martinus Nijoff Publishers, 1993, p. 318.

2/ Ould Abdallah, Ahmedou, La diplomatie pyromane, Paris, Calmann-Lévy, 1996, pp. 143-144.

3/ See the appeal by Amnesty International on 4 November 1996 for effective action to end the massive flow of arms towards the Great Lakes region, AFR 62/24/96.

4/ Ould Abdallah, op. cit., p. 89.